



IFW

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29th day of November 2004.

Name of Person Signing Certificate: Maggie Galle

November 29, 2004

Date

EV 479 327334 US

Signature

MAIL STOP AMENDMENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

ATTILIO TOMASI, et al.

Filed: October 31, 2003

Serial No.: 10/698,737

For: CRYSTALLINE FORM II OF
CABERGOLINE

§ Conf. No.: 3128

§

§

§

§ Art Unit: 1625

§

§ Examiner: Charanjit Aulkakh

§

§ Docket No.: H053912.0133US0

§

§ Customer No.: 01200

RESPONSE

This Response is directed to the Office Action mailed October 8, 2004, Applicants have studied the Examiner's comments. Claims 1-7 and 12 are currently pending. In view of the following remarks, Applicants respectfully submit that the application is in condition for allowance.

REMARKS

Claims 1-7 and 12 are rejected over claims 1-11 of U.S. Patent No. 6,727,363 for obviousness-type double patenting. The Examiner acknowledges that pending claims 1-7 and 12 are not identical to claims 1-11 of U.S. Patent No. 6,727,363 but holds they are not patentably distinct from each other because claims 1-7 and 12 to a process for producing crystalline Form I of cabergoline with greater than 95% purity are encompassed by the process claimed in the cited patent. Applicants disagree with this basis for the rejection. Applicants submit that the question of obviousness-type double patenting is not determined by whether the claims of the cited patent encompass (or dominate) claims 1-7 and 12 but whether the production of crystalline Form I of